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INTERNATIONAL AND LEGAL ASPECTS OF SIMPLIFICATION AND HARMONIZATION OF CUSTOMS PROCEDURES IN THE FIELD OF INTERNATIONAL TRADE IN THE EUROPEAN UNION

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SUMMARY

In this article the peculiarities of the international legal regulation of the simplification and harmonization of the customs procedures in the field of international trade within the European Union are examined. The analysis of the extensive regulatory framework of the European Union (EU) in the field of the simplification and harmonization of the customs procedures is carried out in two main directions: customs cooperation of the European Union at the international level within the framework of the authoritative universal international organizations and international agreements and customs cooperation between the member states of the EU.

At present, the study of the European Union's experience in the international legal regulation of the simplification and harmonization of the customs procedures in the field of international trade is very important for Ukraine, first of all, from the point of view of the effective bringing its customs legislation to European standards, which is one of the acute problems of nowadays, the solution of which will enable to create a qualitative legal basis for the future membership of Ukraine in the European Union.

Key words: economic integration, simplification and harmonization of the customs procedures, electronic declaration, Modernized EU Customs Code, customs blueprints.

МІЖНАРОДНІ ТА ПРАВОВІ АСПЕКТИ СПРОЩЕННЯ Й ГАРМОНІЗАЦІЇ МИТНИХ ПРОЦЕДУР У СФЕРІ МІЖНАРОДНОЇ ТОРГІВЛІ В ЄВРОПЕЙСЬКОМУ СОЮЗІ

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АНОТАЦІЯ

У статті досліджуються особливості міжнародно-правового регулювання спрощення і гармонізації митних процедур у сфері міжнародної торгівлі в межах Європейського Союзу. Приділено увагу аналізу розгалуженої нормативно-правової бази Європейського Союзу (далі – ЄС) у сфері спрощення та гармонізації митних процедур, яка здійснюється у двох основних напрямках: митне співробітництво Європейського Союзу на міжнародному рівні в межах авторитетних універсальних міжнародних організацій і міжнародних договорів та митне співробітництво між країнами-членами ЄС.

Нині вивчення досвіду Європейського Союзу з міжнародно-правового регулювання спрощення і гармонізації митних процедур у сфері міжнародної торгівлі є дуже важливим для України, що дасть змогу створити якісну правову базу для майбутнього членства України в Європейському Союзі.

Ключові слова: економічна інтеграція, спрощення та гармонізація митних процедур, електронне декларування, модернізований Митний кодекс ЄС, митні прототипи.

Introduction. At present, the study of the European Union's experience in the international legal regulation of the simplification and harmonization of the customs procedures in the field of international trade is very important for Ukraine, first of all, from the point of view of the effective bringing its customs legislation to European standards, which is one of the acute problems of nowadays, the solution of which will enable to create a qualitative legal basis for the future membership of Ukraine in the European Union.

Analysis of recent researches and publications. Conceptual bases of the harmonization and simplification of the customs procedures were researched in the works of I.G. Berezhnyuk, V.S. Davidiuk, S.V. Zhluktenko, S.V. Koval, I.V. Konovalov, F.G. Klyan, P.V. Pashko, S.M. Peripolkin, A.Y. Raikova, K.K. Sandrovsky, V.V. Filatov and others. Much attention was paid to the conceptual framework of the harmonization and simplification of the customs procedures in the

international trade, while the peculiarities of the international legal regulation of the simplification and harmonization of the customs procedures within the European Union were not enough researched.

The purpose of the study is to provide a detailed analysis of the peculiarities of the international legal regulation of the simplification and harmonization of the customs procedures in the field of international trade within the European Union for the effective bringing of Ukrainian customs legislation to European standards.

Main results of the study. The international legal regulation of the simplification and harmonization of the national customs procedures in the international trade is carried out both at the world level and at the regional (multilateral) level by the international organizations and the regional economic integration associations. One of the incentives for the association of the states into the regional economic integration associations is the creation of the favorable conditions for the development of the international trade, which is the part of the simplification and harmonization of the national customs procedures.

It should be noted that the legal regulation of the simplification of the customs procedures consists of the actions of the states to reduce the length and the complexity of carrying out the procedures of the customs control, the customs clearance and the collection of the statutory customs payments, can be carried out through the international legal integration in two forms: unification and harmonization [1, p. 219].

Indeed, economic integration is a process of the gradual merging of the economic mechanisms of two or more states, which are usually located in one geographical region, approximately at the same level of the economic development, have compatible socio-economic and political systems and priorities, as well as pursue an integration policy. This process is manifested in the creation of the regional integration associations (free trade zones, customs unions, common markets, economic and political unions), which contain a certain set of economic and legal instruments and norms [2, p. 337].

Most regional economic integration associations are at the first (simpler) stages of the development in the form of the preferential trade agreements or free trade areas. Traditionally, three centers of the economic integration are distinguished in the world: Europe, North America, Asia-Pacific region [3, p. 34].

As a rule, first of all the “classical regional integration blocks” are distinguished: the European Union (EU), NAFTA, APEC, MERCOSUR, ASEAN [4, p. 57].

It should be noted that the main trading partner of Ukraine in the first half of 2018 is the European Union, whose share in Ukrainian imports is more than 41%. It is important that compared to the 1st half of 2017, the volume of Ukrainian imports with EU countries increased by 12,8%. The main European supplier countries are Poland, Germany, Italy and France (Fig. 1, 2). [5].

Also taking into account that in today’s conditions the main and priority direction of Ukraine’s foreign policy is its integration into the EU and according to the EU-Ukraine Association Agreement, our state has undertaken obligations as for gradual harmonization the customs legislation of Ukraine with the existing European standards, the EU itself, as the most powerful center of economic integration in the world, is of great interest to study and obtain some kind of experience.

The customs territory of the European Union brings together the territories of 29 member states, including their territorial waters, airspace and “free customs zones”, where the single customs legislation of the EU is working in its full [6].

The Treaty establishing the European Economic Community (EEC) of 1957 established the following basic principles of the activities of states in the field of the customs regulation:

- refusal from the charge of the customs duties and set quantitative restrictions on the import and export of goods and on all measures of the equivalent effect between Member States;

- formation of the internal market that includes eliminating obstacles to free movement of people, goods, services and capital between Member States;

- forthcoming of the legislation of Member States to the level required for the functioning of the common market;

- association with other countries and territories in order to increase trading and promote common economic and social development [7].

Another important document regulating the customs activities of European customs cooperation and facilitating the customs procedures of the international trade is the EU Customs Code, designed to integrate the EU customs rules into a single set of rules and the codification of numerous customs regulations contained in various numerous regulations and directives.

The adoption of the Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Customs Code of the Community, which became the legal basis for the entry into force of the EU Customs Code [8], played a significant role in the simplification and harmonization of the national customs procedures. In order to implement the provisions of the EU Customs Code, a special Council Regulation No. 2454/93 of 02.07.1993 was adopted (the so-called Implementing Regulation, or the Implementation Code) [9]. This normative act contains the main EU rules, which regulate the application of the customs legislation, including the field of the simplification of the customs procedures. The structure of the Regulation duplicated the structure of the Code, which greatly enhanced the clarity and consistency of the whole set of the customs rules, which were used in the EU. Thus, the vast majority of EU customs regulations in the field of the customs regulation is focused on two main documents: the EU Customs Code and the Implementing Regulation.

In addition, it should be noted that the Modernized Customs Code of the EU (EUMM), which came into force on 24.06.2008, was approved by Regulation (EC) No 450/2008 of the European Parliament and Council of 23.04.2008 and was to start being used in full no later than 24.06.2013. The EUMC significantly simplifies the legislation, the customs procedures for both customs authorities and for national business entities. The main innovation of the EUMM is the creation of the so-called “new electronic customs environment” that simplifies the customs rules and rationalizes the customs procedures [10].

One can agree with M.V. Romanova who refers such points to the main innovations of the EUMC as [11]:

- submission of the customs declarations and accompanying documents only in the electronic form.

- ensuring the exchange of information between the customs authorities and other competent authorities of the EU in electronic form (Art. 5 of the EUMC). It should be noted that the system of information interaction between the customs and other competent authorities of the EU member states has been worked out and adjusted for several years. For example, in Sweden, all relations of foreign economic entities with state authorities involved in customs procedures are carried out through the customs service, thus the “Single Window” system is organized. All information from the subjects of the foreign economic activity is concentrated in the customs authority, and then, if necessary, sent to other state bodies (veterinary and phytosanitary control services, tax and banking institutions). In Sweden, it is also decided that the carrier must send a cargo customs declaration by SMS [12].

- introduction of the concept of “centralized registration”, which enables the goods to be declared to the subjects of foreign

economic activity and to pay customs payments electronically at the place of their location, regardless of whether the EU state has imported goods into the customs territory or in which EU they were used (from Art. 106 of the EUMC).

– development of the concepts of the “Single Window” and “one stop”. Within the framework of the “Single Window” concept and given the availability of information exchange, foreign economic entities submit information on products to only one authority, even if it is to be provided to several competent authorities. The “one stop” concept implies that controlling actions of all competent authorities (customs, sanitary, etc.) for goods will be carried out at one time and in one place (Art. 5 of the EUMC).

February 20, 2012 The EU Commission proposed to modernize the EU Modernized Customs Code (Community Customs Code (Modernized Customs Code)), and on September 11, 2013, the EU Parliament adopted amendments to the EU Customs Code. They are aimed at the simplifying and the unifying customs rules and procedures throughout the EU customs space.

The new edition of the EU MK envisages the transition to the paperless, non-documentary form of the customs clearance by the end of 2020. This means that the paperwork between the enterprises and the customs authorities will be done in the electronic form. In the intermediate, transitional period both paper and electronic forms will be used for the customs documents. The EU is working on the e-circulation objective under the long-term strategic plan. Adoption and maintenance of the new edition of the MK EU has a positive effect. The implementation of these innovations will further enhance the optimization of the customs procedures in the international trade. According to the European Commission, it is expected that the provisions of the EU MK should be fully implemented by the end of 2019 [12].

According to the new edition of the MC, some entities will the rights to:

- move goods that are in the “temporary storage” mode, to another country [13, p. 148];
- carry out customs clearance in the country of its location, and not in the territory of the country, to which goods are imported or in what territory they are consumed [13, p. 60];
- provide only a customs declaration in order to release goods in free circulation, without the need for submission of goods themselves [13, p. 179];
- provide a guarantee for a smaller amount of deferred payments [13, p. 89]. So far, the size of such a reduction is not set, but will be further determined by additional regulations developed for the implementation of the EU MK. In addition, the EU MK introduces a mandatory guarantee requirement for all traders who want to use a simplified customs procedure [13, p. 89].

Tariffication of goods is based on the Combined Nomenclature of the European Union, in which each type of product has a specific code. The EU Customs Code also defines the origin and customs value of goods. Tariff rates are fixed in the Unified Customs Tariff (UCT), sometimes known as the “Unified External Tariff”. The implementation of UCT is carried out through the direct actions. The Unified Customs Tariff was put into effect on June 1, 1968 [14].

The basis of the formation of the UCT of the EU have become customs tariffs in Germany, Italy, France and the Benelux countries. The main elements taken into account when forming and establishing a common customs tariff are: commodity nomenclature; customs value of goods; determining the country of origin of goods [15, p. 61].

The system of exemption from the duty applies to both import and export duties. In addition, it should be noted that the EU countries, in implementing their common customs strategy,

are guided by both the provisions of the WTO documents, as well as regional trade agreements and acts that unilaterally provide preferences to certain countries.

The provisions on exemption from the customs duties in the European Union are contained in the EU Council Regulation No. 1186/2009 of 16.11.2009 on the establishment of a system of exemptions from the duties in the EU [16]. Art. 1 of this Regulation establishes cases in which goods are exempted from the import duties, the export duties, etc., if the goods are released for free circulation or exported from the customs territory of the EU [16].

The signing of the International Convention on the Simplification and Harmonization of Customs Procedures (updated by the Kyoto Convention) on May 18, 1973 [13] by the EU became the most important step towards the harmonization and simplification of the customs procedures in the EU. At present, the EU is a treaty party to the revised Kyoto Convention in the wording of the Brussels Protocol. Taking into account the requirements of the Kyoto Convention on the simplification of the customs formalities, the Single Administrative Document (SAD) [14] was introduced in the EU countries (since 1993) as the single form of the written customs declaration. In addition, taking into account the requirements of the Kyoto Convention, the significant achievements of the EU in the field of the simplification of the customs procedures are the development of the electronic declaration and the introduction of the unified electronic data exchange between the importers (exporters) and the customs authorities. EU Member States apply the “Single Standard of the Electronic Documentation” – EDI [14].

At the same time, one cannot forget that all EU Member States and the EU itself are WTO members and all provisions of the GATT and other international agreements of the WTO system are circulated to them. In addition, the EU, as a regional economic union, enjoys the privileges granted to its members under the GATT. As Gerdeen Mathias notes, for a long time the European community has not formally joined the GATT, but as a result of exercising its competence in the field of the customs and trade policy, it has “grew into” the rights of its member states and thus actually acquired the status of a contracting party to the Agreement.

An important role in the simplification and harmonization of the customs procedures in the EU is played by customs blueprints. In fact, they are the minimum standards for customs services aimed at developing and implementing a mechanism to simplify trade procedures to reduce costs, information, documentation and time required for the customs and other formalities, for the trade community and guarantee the security of the foreign trade supplies. This document was published in 1998. In 2007, the updated customs protocols (customs blueprints) have become a precise reflection of the new challenges and tasks which the EU customs faces and must cope with them in the new century. According to the new edition of the customs standards, the customs services of the EU Member States as well as EU candidate countries should fulfill their functions in accordance with the following criteria: a transparent, comprehensive and efficient system of the customs legislation; effective personnel management system; fair, honest and impartial fulfillment of the official duties; continuous education and advanced training; fast and clear information exchange between the staff and the interested persons; effective assessment and collection of the customs payments; maximum application of the measures to reduce the cost, time and documentation requirements during the customs formalities; ensuring the security measures throughout the whole supply chain; creation of the effective system of risk management during the customs control; effective and efficient customs control on the borders and inside the country; effective

and efficient investigative and law enforcement activities; creation of a transit system based on the Convention on General Transit; creation of the efficient and effective post-customs control and audit service; prevention of the violations of the intellectual property rights and the fight against such violations; maximum use of information and communication technologies that meets international standards; creation, maintenance and placement of proper infrastructure and modern equipment; creation of conditions for laboratory research on customs issues; creation of the effective internal audit. [15].

Therefore, it can be noted that customs standards are intended to help, improve and develop the operational and administrative capabilities of the customs services in order to achieve certain results and serve as criteria for the identifying shortcomings in each of the key areas of activity, as well as for the further improvements in this area.

Taking into account the necessity of obtaining Ukraine’s EU experience in the field of the simplification and harmonization of the customs procedures, we will carry out a brief comparative analysis of the achievements of the EU and Ukraine in this area:

Simplification and harmonization of EU customs procedures, according to the Modernized Customs Union Code (EUMC), the International Convention on the Simplification and Harmonization of Customs Procedures, the Agreement on the Application of Article VII of the General Agreement on Tariffs and Trade 1994, the “customs blueprints”			Simplification and harmonization of the customs procedures of Ukraine according to the Customs Code of Ukraine, the International Convention on the Simplification and Harmonization of Customs Procedures, the Agreement on the Application of Article VII of the General Agreement on Tariffs and Trade 1994, “Customs prototypes” (customs blueprints)		
Customs control	Customs clearance	Customs clearance payments	Customs control	Customs clearance	Customs clearance payments
1	2	3	4	5	6
1. Completely automated, centralized and based on risk management system. 2. To be carried out using the customs post. 3. Customs control is limited to the minimum which is necessary to ensure the compliance with the customs legislation	1. Completely electronic conduction of the customs procedures. 2. Ensuring the exchange of information between the customs authorities and other competent authorities of the EU in electronic form. 3. The “Single Window” system is fully operational (under this system, all information from foreign economic entities in the EU is concentrated in the customs authority, and then, if necessary, sent to other government agencies).	1. Customs product evaluation meets the requirements of Art. VII of the General Agreement on Tariffs and Trade 1994. 2. The calculation of customs payments is carried out as soon as possible after the submission of the declaration of any kind. 3. Unified commodity nomenclature throughout the EU	1. Partly automated, centralized, based on the risk management system that does not work efficiently. 2. Insufficient customs post is carried out (in the Customs Code of Ukraine customs authorities do not provide the provision of post-customs audit, which makes it impossible to carry out these checks in the qualitative way). 3. Customs control is limited to the minimum necessary to ensure the compliance with the customs legislation.	1. Partial electronic conduction of the customs procedures. 2. The exchange of information between the customs authorities and other competent authorities of Ukraine is not fully ensured in the electronic form (not all ministries and departments of Ukraine have an opportunity of the electronic document circulation). 3. The “Single Window” system is created, but it works with complexity (the bureaucratization of this process continues, so with respect to the goods subject to phytosanitary control in 100% of cases, a customs inspection is mandatory). 4. Ukraine has introduced and applies a single standard of the electronic customs documentation of EDI.	1. Customs evaluation of the goods does not meet the requirements of Art. VII of the General Agreement on Tariffs and Trade of 1994 (control of the correctness of the determination of the customs value of goods by the customs authorities is opaque and rather subjective). 2. Charging of the customs payments is carried out as soon as possible after the submission of a declaration of any kind. 3. Unified commodity nomenclature on the whole territory of Ukraine.

In addition, it should be noted that under current conditions, customs standards will also be useful for Ukraine as an EU candidate country, which needs to adopt the EU acquis and provide sufficient operational opportunities in preparation for the implementation of EU legislation in accordance with chapter 5 of the chapter IV and Annex XV of the Association Agreement between Ukraine and the EU.

Conclusions. In summary, it should be noted that the EU has a strict and clear regulatory framework for the simplification and harmonization of the national customs procedures in two main areas: customs cooperation of states at the international level, within the framework of authoritative universal international organizations and international treaties, and customs cooperation within the EU.

The analysis makes it possible to generalize EU achievements in the field of the harmonization and unification of the international customs legislation:

- as for the customs control: the customs control is fully automated, centralized and based on a system of risk

management; customs control can be carried out using the customs post;

- as for the customs clearance: the transition to a paperless, non – documentary form of the customs clearance (full transition will be made by 2020, the submission of customs declarations and accompanying documents is now carried out in the electronic form only, as well as ensuring the exchange of the information between the customs authorities and other competent authorities of the EU in the electronic form;

- the system of the “Single Window” was created, according to which all information from the subjects of foreign economic activity is concentrated in the customs authority, and then, if necessary, sent to other state bodies (veterinary and phytosanitary control services, tax and banking institutions);

- the single standard of the electronic customs documentation EDI has been introduced and applied in the EU member states; as for collecting customs duties and fees: customs payments in EU internal trade are concealed; the process of the customs valuation of goods for charging

customs duties is unified throughout the EU, the commodity nomenclature is unified throughout the EU.

In the current conditions of the international legal regulation of the issue of the simplification and harmonization of the national customs procedures in the international trade, the adoption of the Modernized Customs Code of the EU is very important. This Code contains the basic customs rules, the numerous customs regulations are codified (previously they were in different regulations and directives). It should be noted that in modern conditions, Ukraine as a candidate country to the EU is obliged to implement the Modernized EU Customs Code in the national legislation during three years from the date of entry into force of the Association Agreement between Ukraine and the EU (except of the certain articles). However, one should not forget that bringing the customs legislation of Ukraine into the laws of the EU requires a balanced approach, taking into account the mandatory observance of the interests of the state.

Based on the results of the analysis, one can conclude that in spite of Ukraine's significant progress towards bringing its national customs legislation to European standards in the field of the simplification and harmonization of the customs procedures, this process has not been completed yet [16]. In connection with this fact, we can offer a number of practical recommendations.

Firstly, the risk management system in the course of the customs control should be developed in Ukraine taking into account the specifics of foreign trade activities with the maximum automation and with minimal human impact on this process. Local customs authorities should be able to create their own risk profiles.

Secondly, in order to improve the customs duty in Ukraine, it is necessary to adopt a separate law that creates the proper legal basis for the customs to carry out such inspections and establish specific rights and duties of the auditors.

Thirdly, in order to ensure the electronic exchange of information between the customs authorities and other competent authorities of Ukraine in full, all the ministries and departments of Ukraine, which interact with the State fiscal service of Ukraine during the customs clearance must use an electronic form of information exchange, and they also should start issuing and accepting the documents required for the customs control and registration of goods, completely in electronic form.

Fourthly, it is necessary to exclude the bureaucratization of the process of passing the "Single Window" system in Ukraine; to achieve this, it is necessary:

- to stop the inspection of goods by the customs bodies which are subject to phytosanitary control by adjacent control services in 100 % of cases;
- to reduce the number of scanned documents, submitted by the declarants to the adjacent control services each time.

Fifthly, at the legislative level, it is necessary to improve the procedure of adjusting the customs value of goods (declared by the declarant) by the customs authorities. In this regard, it is necessary to introduce WTO practice in cases where the customs authorities have grounds to doubt the truthfulness or accuracy of the declared customs value.

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